

been alleged, and shall direct the mortgagee to reply in writing to the Board within 30 days after receipt of the notice by the mortgagee. The notice shall also provide the address to which the response shall be sent. If the mortgagee fails to reply during such time period, the Board may make a determination without considering any comments of the mortgagee.

(b) *Mortgagee's response.* The mortgagee's response to the Board shall be in a format prescribed by the Secretary and shall not exceed 15 double-spaced typewritten pages. The response shall include an executive summary, a statement of the facts surrounding the matter, an argument, and a conclusion. Such response shall also address the factors listed in § 25.8. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(c) *Exception for letter of reprimand.* Whenever information comes before the Board that discloses a basis for the issuance of a letter of reprimand, the Board may issue the letter without having previously issued a notice of violation.

(d) *Exception for immediate suspension.* If the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public, the Board may take a suspension action without having previously issued a notice of violation.

[73 FR 60541, Oct. 10, 2008]

§ 25.8 Factors considered in taking administrative action.

In determining which administrative action under 12 U.S.C. 1708(c), if any, should be taken, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences, and any other mitigating or aggravating facts. Where the Board is considering a withdrawal action, the Board will also consider whether the violations were egregious or willful, in order to determine whether a permanent withdrawal is mandated by 12 U.S.C. 1708(c).

[73 FR 60541, Oct. 10, 2008]

§ 25.9 Notice of administrative action.

(a) Whenever the Board decides to take an action in accordance with 12 U.S.C. 1708(c)(3), the Chairperson of the Board, or the Chairperson's designee, shall issue a written notice of the action to the mortgagee at the mortgagee's address of record of the determination. Proof of delivery to the mortgagee's address of record shall establish the mortgagee's receipt of the notice.

(b) In actions for probation, suspension, or withdrawal, the notice shall describe the nature and duration of the administrative action, and shall specifically state the reasons for the action. In actions for probation, suspension, or withdrawal, the notice shall inform the mortgagee of its right to a hearing regarding the administrative action and of the manner and time in which to request a hearing.

[73 FR 60541, Oct. 10, 2008]

§ 25.10 Hearings and hearing request.

(a) *Hearing request.* A mortgagee subject to any administrative action under 12 U.S.C. 1708(c), except for a letter of reprimand, may request a hearing, which shall be held on the record before an administrative law judge. The mortgagee shall submit its request for a hearing within 30 days of receiving the Board's notice of administrative action. The request shall be addressed to the Mortgagee Review Board Docket Clerk, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The request shall specifically respond to the violations set forth in the notice of administrative action. If the mortgagee fails to request a hearing within 30 days after receiving the notice of administrative action, the Board's action shall become final.

(b) *Hearing by Administrative Law Judge.* Hearings are to be conducted by an Administrative Law Judge (ALJ), as set forth in this part. The ALJ shall commence a de novo hearing within 30 days of HUD's receipt of the mortgagee's request, unless the mortgagee moves for an extension of time. The ALJ may extend this time period for good cause.

§ 25.11

(c) *Procedural rules.* The hearing shall be conducted in accordance with the applicable provisions of 24 CFR part 26, with the following modifications:

(1) The mortgagee or its representative shall be afforded an opportunity to appear, submit documentary evidence, present witnesses, and confront any witness the agency presents, except that the parties shall not be allowed to present members of the Board as witnesses.

(2) Discovery of information and/or documents that do not pertain to the appealing mortgagee, including, but not limited to, reviews or audits by the Department or administrative actions by the Board against mortgagees other than the appealing mortgagee, shall not be permitted. Members of the Board shall not be subject to deposition.

(3) The hearing shall generally be held in Washington, DC. However, upon a showing of undue hardship or other cause, the ALJ may, in his or her discretion, order the hearing to be held in a location other than Washington, DC.

[73 FR 60542, Oct. 10, 2008]

§ 25.11 Modification of Board orders.

No order of an ALJ before whom proceedings are conducted under § 25.10 may modify or otherwise disturb in any way an order or notice by the Board, unless the order of the ALJ becomes final agency action in accordance with subpart B of part 26 of this title.

[73 FR 60542, Oct. 10, 2008]

§ 25.12 Public access to information; publication of actions.

(a) Where a notice of administrative action does not result in a hearing and in any cases in which a settlement is entered into by the Board and a mortgagee, all non-privileged information regarding the nature of the violation and the resolution of the action shall be available to the public.

(b) Publication in the FEDERAL REGISTER. The Secretary shall publish, in the FEDERAL REGISTER, a description of and the cause for each administrative action taken by the Board against a mortgagee.

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(c) *Notification of other agencies.* Whenever the Board has taken any discretionary action to suspend and/or withdraw the approval of a mortgagee, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to the Secretary of Veterans Affairs; the chief executive officer of the Federal National Mortgage Association; the chief executive officer of the Federal Home Loan Mortgage Corporation; the Administrator of the Rural Housing Service (formerly the Farmers Home Administration); the Comptroller of the Currency, if the mortgagee is a National Bank or District Bank or subsidiary or affiliate of such a bank; the Board of Governors of the Federal Reserve System, if the mortgagee is a state bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company; the Board of Directors of the Federal Deposit Insurance Corporation, if the mortgagee is a state bank that is not a member of the Federal Reserve System, or is a subsidiary or affiliate of such a bank; and the Director of the Office of Thrift Supervision, if the mortgagee is a federal or state savings association or a subsidiary or affiliate of a savings association.

(d) *Notification to GNMA of withdrawal actions.* Whenever the Board issues a notice of violation that could lead to withdrawal of a mortgagee's approval, or is notified by GNMA of an action that could lead to withdrawal of GNMA approval, the Board shall proceed in accordance with 12 U.S.C. 1708(d).

[73 FR 60542, Oct. 10, 2008]

§ 25.13 Notifying GNMA of withdrawal actions.

When the Board issues a notice of violation that could lead to withdrawal of a mortgagee's approval, or is notified by GNMA of an action that could lead to withdrawal of GNMA approval, the Board shall proceed in accordance with 12 U.S.C. 1708(d).

(Approved by the Office of Management and Budget under Control Number 2502-0450)

[61 FR 685, Jan. 9, 1996]